IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CENTRAL EXCISE APPEAL NO.147 OF 2007

Philips Electronics India Ltd. ..Appellant.

V/s.

The Commissioner of Central Excise
Pune - I Commissionerate ..Respondent.

Mr.Prakash Shah with Raju Motwani i/by PDS Legal for the Appellant.

Mr.P.S. Jetly with Ms.Lata Patne for the Respondent.

CORAM : D.K. DESHMUKH &
J.P. DEVADHAR, JJ.

DATED : 30TH JULY, 2008

P.C. :

1. By this appeal what is challenged is the order passed by the tribunal dated 8-1-2007 in Appeal No.E/713-Mum of 2006. There were two questions involved in the appeal. First question was whether the assessee-appellant is entitled to the interest on the amount of refund. By the order which is impugned in the appeal, the tribunal has accepted the case of the appellant and has held that the interest is payable to the appellant. That part of the order is not under challenge before us. The second question before the tribunal was whether the appellant have discharged the

burden cast upon them to prove that the duty burden on the product has been passed on to its buyers. So far as that aspect of the matter is concerned, it is para 7 of the impugned order, which is relevant. It reads thus :

> "In the light of the above discussion we hold that the assessee have not discharged the burden cast upon them to prove that the duty burden on the product has not been passed on to their buyers. The appellants pray that another opportunity be extended to them to produce further evidence on this aspect. We accept the prayer and remand the issue as to whether the duty burden on the product has been passed on to the assessee's buyers or not, to the adjudicating authority for fresh decision after extending a reasonable opportunity to the appellants of being heard in their defence and producing such evidence as they deem necessary to substantiate their case."

2. Perusal of the above para shows that the tribunal found that the appellant has not discharged the burden cast upon them then the tribunal noticed that a request was made by the appellant for grant of an opportunity to produce further evidence and, therefore, the tribunal made an order for remand of the proceedings to the adjudicating authority. An application for rectification was made, so far as para 7 of the order quoted above is concerned. It was claimed that it is wrongly recorded in the order that the appellants had requested for grant of an

opportunity to lead further evidence. Rectification application was decided by the tribunal by order dated 7-5-2007. So far as relevant part is concerned, the rectification order reads thus :

> "2. We accept the prayer for rectification and hold that para 7 is required to be read as under :
>
> 'In the light of the above discussion we hold that the assessees have not discharged the burden cast upon them to prove that the duty burden on the product has not been passed on to their buyers.'"

3. Perusal of the above order shows that the tribunal has accepted its mistake in recording that it was remanding the proceeding back at the request of the appellant. Now really speaking, if the tribunal found that it has wrongly recorded in the order that the appellant made a request for grant of an opportunity to lead further evidence, then it was for the tribunal at that juncture to consider whether the proceedings need to be remanded or they are to be finally decided by the tribunal, but the order dated 7-5-2007 in the rectification application shows that no reasons have been recorded by the tribunal. A decision as to whether a matter needs to be remanded back or is to be finally decided, is to be taken by the tribunal by applying the settled principles of law. A decision

to remand the matter back cannot be taken only because a party makes a request for grant of an opportunity to lead further evidence. If the tribunal had taken a judicial decision that the proper order in the matter was remand of the proceedings, then before changing that order, the tribunal was obliged to give reasons. No reasons have been recorded. We also think it necessary to record here that remand of the matter merely because one of the party makes a request will not be proper exercise of the judicial powers. Whether the matter needs to be remanded or not is a matter of judicial decision to be taken on the basis of the record and not because some party makes a request or does not makes a request. Really speaking the application for rectification was seeking deletion of a sentence where the tribunal recorded that the appellant has made a request for an opportunity to lead further evidence. Now, in such rectification application either that statement could have been deleted or retained. In the rectification application, the tribunal could not have changed its order from remand to dismissal of the appeal.

4. In our opinion, the procedure adopted by the tribunal cannot be said to be in accordance

with law. In our opinion, therefore, the order of the tribunal to the extent it is challenged before us cannot be sustained and the tribunal should be required to re-apply its mind to the appeal and decide it in accordance with law. In our opinion, therefore, the following order would meet the ends of justice.

5. The order of the tribunal impugned in the appeal to the extent it is challenged is set aside. The appeal is remanded back to the tribunal for denovo consideration and decision in accordance with law to above indicated extent.

6. With these observations, the appeal is disposed of. No costs.

D.K. DESHMUKH, J.

J.P. DEVADHAR, J.